IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7883 OF 2004.

Anant Vasudeo Limaye ..Petitioner

versus

Ramesh Bhalchandra Garware
& Others ..Respondents

Mr.M.B.Baadkar for the Petitioner

Mr. A.A.Kumbhakoni i/b. Crawford Bayley & Co. for the Respondent No.1.

Mr.S.R.Page for Respondent Nos.2 to 5, 8 to 10.

Coram : S.R.Sathe, J.
Dated : 27th Feb., 2006

P.C.

1. Heard both the learned Advocates at length.

2. Being aggrieved by the judgment and order passed by the Court of 2nd Additional District Judge, Pune, whereby he rejected the plaintiff's application for delay condonation, the applicant/original Defendant No.1 in Regular Civil Suit No.81 of 1996 has filed the present petition under Article 227 of the Constitution of India.

3. It is applicant's case that Regular Civil

Suit No.81 of 1996 was filed by the present respondent against him for permanent injunction. Application for temporary injunction was also filed in that case by the plaintiff and the same was decided in favour of the plaintiff and against the present respondent. Being aggrieved by the same the present respondent filed Misc. Civil Appeal No.523 of 1996 in the District Court, Pune. The Applicant had also engaged advocate in the said Misc. Civil Appeal. The appellate court refused to grant any interim relief in the said appeal and also did not call the record and proceedings. According to the applicant the said Miscellaneous Appeal was dismissed in absence of his Advocate. The Advocate did not even inform him about the hearing of the said matter. All along the applicant was under the impression that as the said Miscellaneous Appeal is pending in District Court, the Regular Civil Suit No.81 of 1996 will not be heard till the disposal of the said appeal. However, the trial court proceeded with the said suit ex-parte and passed decree against the present applicant on 8.1.1997.

4. The applicant came to know about the said decree in April 2000 and thereafter he applied for

certified copy of the judgment and decree and received it on 7.9.2000. Thereafter the wife of his brother was seriously ill due to blood cancer and as such the applicant was mentally disturbed and hence could not file the appeal in time and thus there was delay of 1391 days in preferring the appeal. According to him there was sufficient cause for not filing the appeal in time. Hence, the applicant prayed for condonation of delay of 1391 days.

5. The application was strongly opposed by the present respondent. According to the respondent the applicant was all along negligent in proceeding with the suit as well as Miscellaneous Civil Appeal and there was no justifiable ground for him in not filing the appeal in time. Hence, the respondent prayed for dismissal of the application.

6. The learned 2nd Additional District Judge, Pune after considering the material placed before him and hearing the argument of both the learned Advocates came to the conclusion that the applicant failed to point out the sufficient cause for not filing the appeal in time. The applicant failed to explain the delay. Naturally he rejected the

application.

7. In this writ petition the learned Advocate for the petitioner submitted that the learned Additional District Judge should have considered the application liberally. It is true that while considering the application under Section 5 of the Limitation Act the court can take liberal approach. However, it does not mean that the Court should overlook total negligence on the part of the party. Nor does it mean that under the guise of liberal approach the court should put the other side to inconvenience and hardship and allow the party to abuse the process of law. The learned Advocate for the petitioner has drawn my attention to a case Devendra Swamy v. Karnataka State Road Transport Corporation **AIR 2002 SC 2545** wherein it was held that when delay was caused as a result of the negligence of the party's advocate, the party should not suffer and under such circumstances the delay can be condoned. The proposition in this above ruling is not disputed and cannot be disputed. However, the facts of the said case and the facts of the case in hand are quite different. In that case negligence of the advocate was held to be proved.

While in the instant case besides the bare word of interested applicant there is nothing on record to indicate that the advocate engaged by the applicant was in fact negligent. So, it appears that the applicant is in fact trying to take shelter by putting excuse that his advocate had not informed him about the progress of the suit as well as the Miscellaneous Appeal. So, the above cited ruling is of no help to the petitioner.

8. It is to be mentioned in this matter that the application filed by the petitioner is in fact very vague. Deliberately he has avoided to give details about the necessary dates. He has not specifically stated as to when for the first time he received information about the decree passed against him and from whom and how he received the said information. He has stated that he was diligent in prosecuting the matter and he even used to make query with his Advocate about the progress of the matter. If really it would have been the case, then certainly he would have come to know about the dismissal of the Misc. Civil Appeal from his Advocate, but he has not done so. He has not at all given any details as to when and how he had

contacted his lawyer, but he had not parted with the necessary information to him. In fact, when we find that the Court of Additional District Judge has even refused to grant any interim relief in the Misc. Civil Appeal the present petitioner ought to have been more vigilant as the order passed by the trial Court was running against him. But even then we find that he did not take any further necessary steps probably realising the fact that he has no case.

9. The petitioner has tried to gain some sympathy by submitting that his brother's wife was suffering from blood cancer and as such the petitioner was mentally disturbed. However, then also he has not given any details so as to find out whether there is any truth in the stand taken by the petitioner. It is needless to say that whatever be the difficulties and troubles that one is required to face in his day to day life, still it cannot be accepted that for a period of about 1391 days the petitioner was not in a position to contact his lawyer and file the appeal. So. the learned Judge has rightly appreciated all the material placed before him and has correctly held that the

petitioner has failed to show sufficient cause for not filing the appeal in time. Delay caused in the matter is not at all explained by the petitioner. The order passed by the learned 2nd Additional District Judge is legal and correct. There is no necessity to interfere with the said finding in this extra ordinary jurisdiction under Article 227 of the Constitution of India. Hence, the petition is rejected.

(S.R.Sathe, J.)